No. 82-770

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CHARLES F. BENDA,

Petitioner,

vs.

MEDTRONIC, INC.,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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OPINIONS BELOW

The opinions below are accurately described in the petition, except that the Seventh Circuit opinion is now reported at 689 F.2d 645.

QUESTIONS PRESENTED

There are no questions of sufficient significance to require the granting of writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

STATEMENT

The statement of facts in the petition is full of loaded descriptious and hyperbole designed to create a misleading impression of the facts of this case. Respondent, however, will limit itself to correcting only important procedural facts.

On September 3, 1981, Medtronic, Inc. ("Medtronic"), filed a Verified Complaint for Injunctive Relief against petitioner, Charles F. Benda ("Benda"). The complaint asked for preliminary and permanent injunctive relief. Contemporaneously therewith a motion for a temporary restraining order and a preliminary injunc-

tion was filed. On September 4, 1981, a temporary restraining order was entered against Benda requiring him temporarily to refrain from acting in breach of the non-competition clause in his employee agreement with Medtronic. On September 21, 1981 defendant Benda filed an affidavit stating that he had no intention of violating the noncompetition clause of his employee agreement. Based on that affidavit, and a deposition of Benda taken in early September, Medtronic agreed to amend its complaint to ask for declaratory rather than injunctive relief. A First Amended Complaint was filed on September 22, 1981 for declaratory judgment as to the validity of the employment contract and the noncompetition clause.

It came to the attention of Medtronic that petitioner Benda was in fact commit-

ting wholesale violations of his employment agreement, in spite of the earlier restraining order and his later commitment by affidavit. An Amendment to Plaintiff's First Amended Complaint was filed on October 22, 1981, reinstating the request for injunctive relief.

Benda filed an answer to the First Amended Complaint for Declaratory Relief on October 15, 1981, raising two affirmative defenses. In addition he plead a counter claim in three counts. Benda demanded trial by jury.

Nearly identical cases against two other Medtronic sales representatives who left at approximately the same time as Benda and went with the same competitor as Benda, were filed within days of the Benda case. The three cases were consolidated for pretrial discovery, and later con-

solidated for all purposes. The two other cases followed roughly the same procedural route as the Benda case. One of the other two sales representatives requested a jury and one did not. Neither filed counter-claims. The three cases were tried together beginning November 10, 1981, before the Court without a jury. They were tried solely on the injunction request.

Four days prior to the trial, the District Court, on its own motion, called each of the counsel involved in the consolidated cases, and told them that the jury trial request was denied, and that the Benda counter-claims were severed for trial at a later date. On the first day of trial, November 10, 1981, the Court issued a written memorandum opinion and order on the jury and severance question. Benda made and argued on that date a motion for

reconsideration. It was denied.

The jury issue was raised again before the Seventh Circuit. The Seventh Circuit affirmed the order of the District Court and adopted its decision in its entirety. 689 F.2d at 650.

On or about March 16, 1982, the parties were before the District Court on Medtronic's Motion to Dismiss or for Summary Judgment on Counter-Claims, Counts I through III, by defendant Benda. Upon counsel for Benda's representation that if the decision of the Seventh Circuit were adverse, his client probably would not pursue those counter-claims, the Court entered an order staying the Motion to Dismiss or for Summary Judgment pending ruling of the Court of Appeals. Defendant Benda has never, since the day of the ruling by the Court of Appeals done any-

thing to pursue his counter-claims or to bring them before the District Court for trial. The motion for summary judgment or to dismiss remains pending.

The injunction against Benda expired August 25, 1982, in accordance with the terms of the employment agreement.

ARGUMENT

I.

THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN MEDTRONIC IS NOT IN CONFLICT WITH ANY DECISION OF THE UNITED STATES SUPREME COURT

The only consideration governing review on certiorari, as set forth in Rule 17 of the Rules of the Supreme Court, which petitioner seriously claims, is that the decision of the Seventh Circuit in Medtronic is in direct conflict with the decision of the United States Supreme Court in Beacon Theatres, Inc. v. Westover, 359

U.S. 500 (1959).[1] That simply is not the case.

Petitioner's position would require one to hold that whenever factual issues are raised by an affirmative defense, or whenever counter-claims are filed which would otherwise require jury trial, regardless of the nature of the claim or claims for relief as pleaded in the initial complaint, there must, in every case, be a jury trial of the factual issues, or counter-claims, prior to a ruling on equitable claims. While that was never the holding in Beacon Theatres, Inc. v. West-

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[1] Petitioner also cites as cases in direct conflict Heflin v. United States, 358 U.S. 415 (1959), a criminal case of no apparent relevance, and Pennsylvania R.R. v. O'Rourke, 344 U.S. 334 (1953), a case deciding whether a plaintiff's appropriate remedy was the Federal Employers' Liability Act or the Longshoremen's and Harbor Workers' Compensation Act, also of no apparent relevance.

over, 359 U.S. 500 (1959) or Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962), this Court laid that notion to rest in Katchen v. Landy, 382 U.S. 323 (1966) and Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979). In Parklane the Court stated:

> Both the premise of Beacon Theatres, and the fact that it enunciated no more than a general prudential rule were confirmed by this Court's decision in Katchen v. Landy, 382 U.S. 323. In that case the Court held that a bankruptcy court, sitting as a statutory court of equity, is empowered to adjudicate equitable claims prior to legal claims, even though the factual issues decided in the equity action would have been triable by a jury under the Seventh Amendment if the legal claims had been adjudicated first. The Court stated:
>
> > Both Beacon Theatres and Dairy Queen recognize that there might be situations in which the Court could proceed to resolve the equitable claims first even

> though the results might be dispostive of the issues involved in the legal claim. Id., at 339.

> Thus the Court in Katchen v. Landy recognized that an equitable determination can have collateral estoppel effect in a subsequent legal action and that estoppel does not violate the Seventh Amendment. 439 U.S. at 334-335.

Furthermore, the Medtronic case is truly an equitable claim. It is not like Beacon Theatres, where the suit for declaratory relief and a strange sort of injunction was a pre-emptive suit to stop a legal-in-nature antitrust claim. Nor is it like the Dairy Queen case where a large part of the claim was also essentially legal and immediate relief was not necessary as in many injunctive situations. In Medtronic the claim for relief was strictly for injunctive relief.

The very function of equity would be

defeated if the need for immediate injunctive relief could be defeated simply by filing an affirmative defense or counterclaim at law. And it is clear in this case that the counter-claims, which were not common to the two consolidated defendants, raised issues which would have required additional discovery and a longer and more complicated trial. Here, where violations of the restrictive covenants were occurring even during the trial itself, until a ruling had to be made on the second day of trial ordering the defendants' to cease, any further delay would have been crucial. Equity would not have had a chance to be done, however imperfectly.

In addition to the lack of conflict with any decision of the United States Supreme Court, plaintiff's argument contains factual and logical difficulties

which make his constitutional claims murky at best. If Benda is claiming that he has been deprived of his right to jury trial with respect to his affirmative defenses, the determinative factor in the right to a jury trial is not whether the pleadings require a resolution of factual disputes, but the type of relief which is sought. Ross v. Bernhard 396 U.S. 531, 538 (1970). In the consolidated trial, the only relief sought was Medtronic's request for injunctive relief to enforce the noncompetition clause in its employment agreements with the consolidated defendants, coupled with declaratory relief as to the meaning of the agreement. Benda has frankly conceded, in his brief to the Seventh Circuit at pages 23-24, that Medtronic has never requested damages against defendants in those proceedings. The mere fact that there are

factual issues does not convert a purely equitable claim into a legal one. Owens-Illinois, Inc. v. Lake Shore Land Co., 610 F.2d 1185, 1190 (3rd Cir. 1979).

If Benda is asserting that he is being denied jury trial rights with regard to his counter-claims, there are even more problems. With regard to the counter-claims, the issue is not ripe for decision. First, Medtronic has made a representation to the District Court that it does not intend to contravene whatever rights Benda is properly entitled to under the Beacon Theatre case or other case law. If there is any dispute as to any particular issue, that dispute will be presented to the District Court when, and if, the counter-claims are tried. Second, Medtronic made a motion for summary judgment or to dismiss each of the counter-claims. That motion

was stayed, and therefore not pursued by Medtronic, on counsel for Benda's representation that in all likelihood the claims would not be pursued if the decision of the Seventh Circuit were adverse to Benda, which it was. Thus, the motion to dismiss the counter-claims or for summary judgment is still pending, waiting to be briefed and decided. Third, Benda, since the date of the Seventh Circuit decision on February 4, 1982, has not pursued his counter-claims in any fashion, either by discovery, or by bringing them to the attention of the Court for the setting of a trial date. Thus, any issue as to Benda's deprivation of jury trial rights with regard to his counter-claims is premature. Furthermore, it is made legally doubtful by Parklane Hosiery Co. v. Shore, supra.

II.

QUESTIONS NUMBERS 4 AND 5 IN THE PETITION RAISE NO ISSUES WORTHY OF THE GRANTING OF A WRIT OF CERTIORARI DIRECTED TO THE SEVENTH CIRCUIT COURT OF APPEALS AS DEFINED IN SUPREME COURT RULE 17, AND ARE THEREFORE NOT ADDRESSED.

III.

THE DECISION OF THE COURT OF APPEALS IN THIS CASE IS NOT INCONSISTENT WITH ITS DECISION IN MACHLETT LABORATORIES, INC. v. TECHNY INSTITUTE, INC., 665 F.2d 795 (1981), AND EVEN IF IT WERE, IS NOT AN ISSUE WORTHY OF THE GRANTING OF A WRIT OF CERTIORARI PURSUANT TO SUPREME COURT RULE 17.

The Machlett Laboratories case simply involves the issuance of an injunction to prevent one party from selling mobile X-ray units. The suit was brought by a former employer who sold stationary X-ray units. The Seventh Circuit found that at least four of the elements for the grant of an injunction were not proven by plaintiff.

Plaintiff failed to prove lack of an adequate remedy at law, failed to prove irreparable injury, failed to prove that the balance of hardships were in its favor, and failed to prove that granting the injuction would not disserve the public interest.

CONCLUSION

The Petition for a Writ of Certiorari to the Seventh Circuit Court of Appeals should be denied.

Respectfully submitted,

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